IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 134 of 1992

For Approval and Signature:

HON'BLE MR.JUSTICE D.A.MEHTA
and
HON'BLE MS.JUSTICE H.N.DEVANI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

COMMISSIONER OF INCOME-TAX

Versus

RAVINDRA CHANDULAL SHAH

Appearance:

1. INCOME TAX REFERENCE No. 134 of 1992
MR TANVISH U.BHATT FOR MR MANISH R BHATT
for Applicant.
MR SN SOPARKAR for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE D.A.MEHTA
and
HON'BLE MS.JUSTICE H.N.DEVANI

Date of decision: 29/12/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE D.A.MEHTA)

1 The following question has been referred by the

Income Tax Appellate Tribunal, Ahmedabad Bench 'B' under Section 256(1) of the Income Tax Act,1961 (the Act), for the opinion of this Court at the instance of the Commissioner of Income Tax, Gujarat III, Ahmedabad.

"Whether in law and on facts, the Appellate Tribunal is right in holding that no interest u/s.139(8) or under section 215 can be charged on revision of an assessment under sec.155 of the Act?"

2 The Assessment Year is 1983-84 and the relevant accounting period is S.Y.2038. The respondent assessee was originally assessed at a figure of net loss of Rs.14,528/- under Section 143(3) of the Act on 6/3/1986. Subsequently the Assessing Officer passed an order under Section 155 of the Act on 29/7/1986 and revised total income at Rs.4,80,489/-. While framing the said order the Assessing Officer also charged interest under Sections 139(8) and 215 of the Act.

3 The assessee carried the matter in appeal before the CIT (Appeals), who took into consideration the amended provisions applicable with effect from 1/4/1985 i.e. Assessment Year 1985-86 and subsequent years and after referring to the Explanatory Note to the Taxation Laws (Amendment) Act,1984 held that there was no scope for applying such amended provisions in earlier assessment years. In other words the CIT(Appeals) held that the amended provisions were not applicable for the assessment year under consideration and accordingly deleted the interest charged under Sections 139(8) and 215 of the Act.

4 The revenue carried the matter in appeal before the Tribunal. The Tribunal for the reasons stated in its order dated 11/3/1991 upheld the order of CIT(Appeals) and dismissed the appeal of the revenue.

5 Mr.Tanvish U.Bhatt, learned Standing Counsel appearing on behalf of the revenue was fair enough to point out a direct decision of this Court in the case of Commissioner of Income Tax Vs. Vishwajit Mehta, (2002) 254 ITR 66 and submit that the issue was concluded against the Revenue by the said decision. Though served there is no appearance on behalf of the respondent-assessee.

6 In light of the fact that the issue stands answered by the aforesaid decision of this Court it is not necessary to set out the facts and contentions in

detail, and for the reasons stated in the case of CIT Vs.Vishwajit Mehta (supra) the question referred to the Court is answered in the affirmative i.e. in favour of the assessee and against the revenue.

7 The Reference stands disposed of accordingly. There shall be no order as to costs.

(D.A.Mehta, J)

(H.N.Devani, J)

m.m.bhatt